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Osborne, 117 Ia. 427, 90 N. W. 844, and as the plaintiff admittedly acquired no title under the execution sale, its rights must rest upon the claim that its tax title, acquired during the pendency of the appeal, gave it a prior right to that of V. The determining question then is: Can one holding premises under a judgment of a lower court, pending an appeal by the adverse party who claims under a tax title, acquire a valid title by letting the property sell for taxes and then purchasing it himself? It is elementary that one whose duty it is to pay the taxes cannot acquire by tax deed a title which will defeat a conflicting claimant or lienholder, *First Congregational Church* v. *Terry,* 130 Ia. 513, 107 N. W. 305, 114 Am. St. Rep. 443; *Defreese* v. *Lake,* 109 Mich. 415, 67 N. W. 505, 32 L. R. A. 744, 63 Am. St. Rep. 584; BLACK, TAX TITLES (Ed. 2) § 273; nor may a life tenant cut off the remainder-man by such means. *Crawford* v. *Meis,* 123 Ia. 610, 99 N. W. 186, 66 L. R. A. 154, 101 Am. St. Rep. 337; *Prettyman* v. *Walston,* 34 Ill. 175; COOLEY, TAXATION (Ed. 2)), 467. Since the plaintiff at all times prior to the reversal of the original foreclosure decree insisted that it had a valid title, it was under a legal obligation to pay the taxes, and its purchase of the property is considered merely a mode of paying such taxes and hence could not be made the basis of an independent claim. This view does not meet the approval of the minority, who maintain that V.'s title was superior from the very beginning, despite the plaintiff's claim and the ruling of the lower court, and that it was therefore the duty of V. to pay the taxes in order to protect his title against subsequent sales for taxes. This view finds support in *Jeffery* v. *Hursh,* 45 Mich. 59, 7 N. W. 221; *Griffin* v. *Turner,* 75 Ia. 250, 39 N. W. 294; *Pickering* v. *Lomax,* 120 Ill. 289, 11 N. E. 175, and commends itself as the more logical, but the one which is less likely to work out justice in its application.

MUNICIPAL CORPORATIONS—GRANT TO WATER COMPANY EXCLUSIVE.—The borough of Brushton, by ordinance, authorized the plaintiff water company "to lay pipes for the purpose of supplying water to the borough and its inhabitants." Plaintiff was incorporated under an act which denied exclusive privilege. Subsequently Brushton was annexed to the City of Pittsburg and by the terms of the ordinance annexing the borough the City of Pittsburg agreed to accept all contracts for the supply of water made by said borough. The City of Pittsburg, several years later began preparations to extend its own water system into the Brushton territory. In an action by plaintiff to restrain the defendant city from so extending its system, *Held,* that the plaintiff was entitled to an injunction regardless of whether or not plaintiff was given exclusive privilege. *Pennsylvania Water Co.* v. *City of Pittsburg et al.* (1910), — Pa. —, 75 Atl. 945.

The injunction was granted by an almost equally divided court. The majority based their opinion upon the proposition laid down by the court in the case of *White* v. *City of Meadville,* 177 Pa. 643, 34 L. R. A. 567, that where a city is given the option of providing water in one of two ways, either by constructing a water system of its own or through an independent agency, it cannot employ both methods at the same time, and having provided for a water supply by contract, with an independent agent, it is with-

out power to employ the alternative method. The Meadville case involved the legislative grant of an exclusive privilege, and would seem distinguishable from the principal case on that ground. The opinion of the minority, that the city was not precluded by the franchise from itself installing a plant, seems to find support from the larger number of decisions. Grants of special privileges by franchise are to be construed most strongly against the grantee and in favor of the public. *Knoxville Water Co.* v. *City of Knoxville,* 200 U. S. 22. Cf. 4 MICH. L. REV. 561. The exclusive right to supply water to a town is not acquired by a water company from a franchise giving it merely the right to lay and maintain pipes in the street. *Walla Walla* v. *Walla Walla Water Co.,* 172 U. S. 1; *Water Co.* v. *Brooklyn,* 166 U. S. 685. And where the grant of a franchise to a water company is without any words of exclusion or limitation upon the right of the city, the city is not precluded from subsequently establishing water works of its own. *North Springs Water Co.* v. *Tacoma,* 21 Wash. 517, 58 Pac. 773, 47 L. R. A. 214; *Syracuse Water Co.* v. *Syracuse,* 116 N. Y. 167, 22 N. E. 381; *Re City of Brooklyn,* 143 N. Y. 596, 38 N. E. 983; *Mobile* v. *Deanville Water Co.,* 130 Ala. 379, 30 South. 345; *Water Co.* v. *Village of Skaneatales,* 184 U. S. 354; *Tillamook Water Co.* v. *City of Tillamook,* 139 Fed. 405.

MUNICIPAL CORPORATIONS—INJURY TO SHADE TREES IN THE STREET—RIGHTS OF ABUTTING OWNER.—A lighting company having a general franchise and contract with the city for lighting purposes cut and mutilated a shade tree in front of the premises of an abutting owner who did not own the fee in the street. It did not appear that the cutting was reasonably necessary for the lighting of the streets. In an action by the abutting owner for damages the court *held,* that the plaintiff "has a right in the nature of an equitable easement therein, to grow and maintain the shade tree and to maintain an action against a wrongdoer for injuring the tree." (WILLIAMS, J. dissenting.) *Adams* v. *Syracuse Lighting Co.* (1910), 121 N. Y. Supp. 762.

The court bases its decision upon the case of *Donohue* v. *Keystone Gas Co.* (1905), 181 N. Y. 313, 73 N. E. 1108, 70 L. R. A. 761, 106 Am. St. Rep. 549 which is in point, and which is supported by the case of *Lane* v. *Lamke* (1900), 53 App. Div. 395. When the fee of the land in the street is in the abutting owner he has the rights and remedies of the owner of a freehold, subject only to the public easement. *Western Union Tel. Co.* v. *Krueger* (1902), 30 Ind. App. 28, 64 N. E. 635. And it is "comparatively unimportant, as respects the relative rights of the abutting owner and the public in and over the streets, whether the *bare fee* is in the one or the other." 2 Dill. Mun. Corp. Ed. 4, § 664 a. So when the fee is in the city the abutting owner may recover from third persons for injuries to trees in front of his premises. *Rockford Gaslight & Coke Co.* v. *Ernst* (1896), 68 Ill. App. 300; *Donohue* v. *Keystone Gas Co.,* supra; *Lane* v. *Lamke,* supra, and to the same extent as for negligent injury to his carriage while lawfully standing on the street in front of his premises. *Lovejoy* v. *Campbell et al.* (1902), 16 S. D. 231, 92 N. W. 24. These cases are open to the objection that "the granting of this easement is an unnecessary extension into the field of so-called æsthetic easements."